

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

WP(C).No. 27891 of 2006(U)

PETITIONER:

K.N. SABU, S/O.K.K. NARAYANAN,
AGED 39 YEARS, RESIDING AT KONDATTY HOUSE,
KUDUYATHOOR P.O., KUDAYATHOOR VILLAGE,
THODUPUZHA TALUK.

BY ADV. SRI.K.N.CHANDRABABU

RESPONDENTS:

1. THE KUDAYATHOOR GRAMA PANCHAYAT
REP. BY THE SECRETARY, KUDAYATHOOR.
2. NARAYANA PILLAI, S/O.AYYAPPAN PILLAI,
AGED ABOUT 65, RESIDING AT KANDATHIL HOUSE
KUDAYATHOOR P.O., KUDAYATHOOR VILLAGE,
THODUPUZHA TALUK.

BY ADV. SRI.GEORGE MATHEW
SRI.P.CHANDY JOSEPH
SRI.A.V.TELLES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC : 27891/2006

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : TRUE COPY OF THE NO OBJECTION CERTIFICATES ISSUED BY THE DISTRICT MEDICAL OFFICER, IDUKKI.
- EXT.P2 : TRUE COPY OF THE NO OBJECTION CERTIFICATES ISSUED BY THE 2ND RESPONDENT.
- EXT.P3 : TRUE COPY OF THE LICENCE CERTIFICATE PERTAINING TO THE PERIOD 2004-2005 ISSUED FROM THE KUDAYATHOOR GRAMA PANCHAYAT.
- EXT.P4 : TRUE COPY OF NOTICE DT.15.7.06 ISSUED BY THE 1ST RESPONDENT.
- EXT.P5 : TRUE COPY OF THE MAHAZAR IS PREPARED BY THE SUB ENGINEER, ANTI POWER OF THEFT SQUAD DT.21.07.06.
- EXT.P6 : TRUE COPY OF THE REPLY LETTER DT.23.08.06 SUBMITTED BY THE 1ST RESPONDENT.
- EXT.P7 : TRUE COPY OF THE ORDER ISSUED BY THE SECRETARY OF THE 1ST RESPONDENT.
- EXT.P8 : TRUE COPY OF THE LETTER-DATED 23.08.06 SUBMITTED BEFORE THE 1ST RESPONDENT.
- EXT.P9 : TRUE COPY OF THE APPEAL DT.23.08.06 SUBMITTED BY THE PETITIONER.
- EXT.P10 : TRUE COPY OF THE JUDGMENT IN WPC No.23812/2006 DT.01.09.2006 PASSED BY THIS HON'BLE COURT.
- EXT.P11 : TRUE COPY OF THE DECISION DT.26.09.06.
- EXT.P12 : TRUE COPY OF THE NOTICE NO.A1-591/06 ISSUED BY THE 1ST RESPONDENT.
- EXT.P13 : TRUE COPY OF THE BILLS ISSUED BY THE ELECTRICITY BOARD PERTAINING TO JULY.
- EXT.P14 : TRUE COPY OF THE BILLS ISSUED BY THE ELECTRICITY BOARD PERTIANING TO AUGUST.
- EXT.P15 : TRUE COPY OF THE BILLS ISSUED BY THE ELECTRICITY BOARD PERTAINING TO SEPTEMBER.
- EXT.P16 : TRUE COPY OF THE ORDER ENDORSED IN THE APPLICATION.

1st RESPONDENT'S EXHIBITS:

- EXT.R1(A) : TRUE COPY OF THE REPORT SUBMITTED BY THE HEALTH INSPECTOR P.H.C KUDAYATHOOR ON 19.07.2006.

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2nd RESPONDENT'S EXHIBITS:

EXT.R2(A) : TRUE COPY OF THE COMMISSION REPORT.

PIUS C. KURIAKOSE, J.

W.P.(C) No.27891 OF 2006

Dated this the 4th day of December, 2006

JUDGMENT

The petitioner who is running a small scale industrial unit by name Sree Vishnu Rubber Products within the limits of the 1st respondent has filed this Writ Petition seeking a writ of certiorari for quashment of Exts.P7, P11 and P12 orders. Exts.P7 and P12 are orders of the Panchayat Secretary and Ext.P11 is the resolution of the Panchayat by which the petitioner is directed to stop the functioning of the machineries in the petitioner's unit. 1st respondent is the Panchayat and the 2nd respondent is a neighbour who has place of residence near to the petitioner's unit. Petitioner submits that licence was granted to the petitioner upon production of NOC from the DMO and NOCs from local residents including 2nd respondent, copy of which is produced as Ext.P2. The unit is functioning smoothly from 1999 onwards strictly in accordance with the terms and conditions stipulated in the licence. The machineries which are installed in the unit are highly sophisticated ones and the unit is conceived and designed in such a manner that working of the same will not cause any sort of nuisance to the nearby residents or the public at large. Petitioner alleges that while matters stood as above the 2nd respondent requested the petitioner that his daughter-in-law be appointed in the unit as an employee.

Petitioner could not oblige since no vacancies were available. On account of this, the 2nd respondent became inimical towards the petitioner. Petitioner further alleges that on account of this inimity, the 2nd respondent filed some complaint and on that reason the 1st respondent issued Ext.P4 notice directing the petitioner not to operate electric motor having capacity more than 15 HP. To Ext.P4, petitioner submitted a reply enclosing Ext.P5 Mahazar. Ext.P6 reply submitted by the petitioner reiterates that he is using only 15 HP motor in the unit. The Secretary of the 1st respondent issued Ext.P7 order directing the petitioner to stop the operation of the motors. This order is in violation of S.233A of the Panchayat Raj Act. The 1st respondent has no power to issue an order like Ext.P7. Therefore challenging Ext.P8 petitioner preferred Ext.P9 appeal before the 1st respondent. Petitioner thereafter moved this Court. This Court by Ext.P10 judgment directed the 1st respondent to take a correct decision on Ext.P11. But notwithstanding that direction the 1st respondent ignored S.233A and took a decision vide Ext.P11 order. On the basis of Ext.P11, the Secretary of the 1st respondent has now issued Ext.P12. Exts.P11 and P12 are impugned by the Writ Petitioner on various grounds.

2. The 1st respondent has filed a detailed counter affidavit against the allegations raised in the grounds. To Ext.R1(a) produced along with the counter affidavit, a report has been submitted by the Health Inspector attached to the Primary Health Centre, Kudayathoor after conducting an

inspection of the premises with respect to the allegations levelled by the 2nd respondent. It is then contended that after receiving Ext.P4 what the petitioner did was to ignore Ext.P4 and rush to the Munsiff's Court. In O.S. No.219/2006 filed by the petitioner the Panchayath was the sole respondent. The learned Munsiff dismissed the injunction petition filed by the petitioner by order dt.18.8.06 and that order has become final. The learned Munsiff considered the entire matter on merits and dismissed the Suit. Considering the appeal filed by the petitioner on merits, the same was rejected by the Panchayat vide Ext.P11 order. This was why Ext.P12 order was issued. Petitioner has statutory remedy against Ext.P12 which he is yet to exhaust.

3. To the counter affidavit a reply affidavit has been filed by the petitioner. It is submitted therein that the Health Inspector's report is an unreliable one, since it is not supported by technical assistance of the Electrical Inspectorate. The 1st respondent is acting as a spokesman of the 2nd respondent. The mixing mill of the petitioner is operated only during the day time in one shift. The consumption of energy by a 15 HP motor per hour is 12 K.W., equivalent to 12 electrical units. The energy bills issued by the Electricity Board will reveal the average consumption of the unit. Additional Exts.P13, P14 and P15 are copies of the energy bills. It is contended that the petitioner who invested several lakhs of rupees for the establishment of the industry is taking utmost care and caution to keep

the machinery in perfect condition. In the application submitted by the petitioner on 27.6.06 he expresses his desire to shift unit into the building situated in the very same Panchayat. The Panchayat Committee took a decision that

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I. Ext.P16 is copy of the application. Petitioner has already taken steps to get sanction from the concerned department. Now the NOC from the Health Department is only to be obtained. All other formalities are satisfied.

4. The 2nd respondent has also filed a detailed counter affidavit supporting the orders now passed by the Panchayat. Along with the same Ext.R2(a) - Commission Report submitted by the Advocate Commissioner in O.S. No.180/2006 of the Munsiff's Court, Thodupuzha is also produced.

5. I have heard the submissions of Sri.K.N.Chandrababu, learned counsel for the petitioner and Sri.George Mathew, learned counsel for the Panchayat and Sri. P.Chandy Joseph, learned counsel for the 2nd respondent. I am of the view that the Writ Petition can be disposed of in the following terms:

The Committee of the Panchayat will depute an expert for getting a report on the impact of the working of the motor in question in the context of noise pollution. The Committee will reconsider the appeal and take a fresh decision on the appeal, taking into account the report obtained also.

The entire expenses for getting expert report shall be borne by the petitioner. The petitioner will be informed of the expenses to be remitted for obtaining expert report and notice will be issued to him in that regard. The petitioner will remit the expenses within seven days of receiving intimation. Fresh orders on the appeal will be passed by the Panchayat within three weeks of getting report from the expert.

In the meanwhile, the petitioner will also expedite the proceedings presently pending before the D.M.O and get no-objection certificate from the D.M.O. Once the petitioner obtains no-objection certificate from the D.M.O., the Panchayat will pass appropriate orders on the shifting application submitted by the petitioner.

The Writ Petition is disposed of as above.

PIUS C. KURIAKOSE, JUDGE

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